

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

FORT WORTH DIVISION

JENNIFER VANDERSTOK;
MICHAEL G. ANDREN;
TACTICAL MACHINING, LLC, a limited liability
company; and
FIREARMS POLICY COALITION, INC., a nonprofit
corporation,

Plaintiffs,

and

BLACKHAWK MANUFACTURING GROUP INC.
d/b/a 80 PERCENT ARMS; DEFENSE
DISTRIBUTED; and SECOND AMENDMENT
FOUNDATION, INC.,

Intervenor-Plaintiff,

v.

MERRICK GARLAND, in his official capacity as
Attorney General of the United States;
UNITED STATES DEPARTMENT OF JUSTICE;
STEVEN DETTELBAACH, in his official capacity as
Director of the Bureau of Alcohol, Tobacco, Firearms
and Explosives; and
BUREAU OF ALCOHOL, TOBACCO, FIREARMS
AND EXPLOSIVES,

Defendants.

Civil Action No. 4:22-cv-691-O

**INTERVENOR-PLAINTIFF BLACKHAWK MANUFACTURING GROUP INC. d/b/a 80
PERCENT ARMS' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, and Northern District of Texas Local Civil Rule 56.1-56.7, Intervenor-Plaintiff BlackHawk Manufacturing Group Inc. d/b/a 80 Percent Arms (collectively, as used herein, "BlackHawk"), through its undersigned counsel, respectfully move

for summary judgment against Defendants Merrick Garland, United States Department of Justice, Steven Dettelbach, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (collectively, “Defendants”) on the following claims within their Intervenor Complaint, ECF No. 99.

COUNTS

COUNT I – The Final Rule Exceeds Defendants’ Statutory Authority. The Definition of “Frame or Receiver” and Identification of Firearms (“Final Rule”), 87 Fed. Reg. 24,652, 24,667 (Apr. 26, 2022) exceeds Defendants’ statutory authority in violation of the Administrative Procedures Act (“APA”), 5 U.S.C. § 706(2)(A) and § 706(2)(C). To the extent Count I remains appropriate for summary judgment, BlackHawk hereby incorporates its briefing submitted previously regarding the same. *See* ECF Nos. 99 and 134.

COUNT II The Adoption of the Final Rule Violates the Separation of Powers

COUNT III The Final Rule is Unconstitutionally Vague

COUNT IV The Final Rule is Arbitrary, Capricious, and an Abuse of Discretion

COUNT V The Final Rule Was Adopted Without Observance of Procedure Required by Law

COUNT VI The Final Rule Violates the Nondelegation Doctrine

COUNT VII The Final Rule is Contrary to Constitutional Right, Power, Privilege, or Immunity

COUNT VIII The Final Rule’s Regulations on “Privately Made Firearms” Exceed the Limits of the Commerce Clause

COUNT IX The Final Rule Chills First Amendment Rights

COUNT X The Final Rule Effectuates a Regulatory Taking of “Privately Made Firearms” Without Just Compensation

BlackHawk submits that the matters required under Rule 56.3 are also set forth in the Brief, which is being filed concurrently with the present motion according to Local Rules 7.1 and 56.5.

BlackHawk's Motion for Summary Judgment includes this Motion and Brief in Support, collectively. BlackHawk respectfully requests this Honorable Court enter judgment in their favor and grant the present Motion for Summary Judgment fully or in a way the Court deems proper.

DATED this 23rd day of December, 2022.

Respectfully submitted,

/s/ Brian D. Poe
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CERTIFICATE OF SERVICE

I hereby certify that, on December 23, 2022, a true and correct copy of the foregoing document was served via the Court's CM/ECF system to all counsel of record. I certify that all participants in this case are registered CM/ECF users and service will be accomplished by this Court's CM/ECF system.

/s/ Brian D. Poe

Brian D. Poe